MEMORANDUM OF AGREEMENT BETWEEN THE DELAWARE PSYCHIATRIC CENTER AND THE DELAWARE DEPARTMENT OF JUSTICE TO ENSURE ENFORCEMENT OF AND COMPLIANCE WITH THE *MENTAL HEALTH PATIENTS' BILL OF RIGHTS* AT THE DELAWARE PSYCHIATRIC CENTER

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I. GENERAL PROVISIONS

A. This Memorandum of Agreement ("Agreement" or "MOA") is entered into between the Delaware Department of Justice ("DDOJ") and the Delaware Psychiatric Center ("DPC").

B. The DPC, located on the Herman M. Holloway, Sr. Campus at 1901 N. DuPont Highway, New Castle, DE 19720, is a hospital as defined by 16 Del. C. § 5101(2) certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of mentally ill persons 18 years of age or older.

C. The Agreement resolves and terminates the investigation conducted by the DDOJ at the DPC pursuant to the *Mental Health Patients' Bill of Rights* ("Bill of Rights"), 16 Del. C. §§ 5161 & 5162. The DDOJ and DPC agree to continue to work cooperatively going forward on any and all investigations conducted by the DDOJ at DPC. Moreover, the DDOJ agrees to promptly notify DPC whenever an investigation is closed or otherwise resolved.

D. Since 1974, the Bill of Rights has set forth specific civil rights guaranteed to all Delaware patients in mental health hospitals and residential centers. These rights "are in addition to, and not in derogation of, any other statutory or constitutional rights." 16 Del. C. § 5161(b)(20). Among the rights guaranteed to every patient in a mental health facility are:

The right to be free from abuse, both physical and emotional, mistreatment, and neglect. 16 Del. C. § 5161(b)(6).

The right to be free from unjustifiable force through the use of seclusion, physical restraint, drugs or other interventions administered primarily for purposes of staff convenience absent an emergency and/or without a written order from an authorized mental health professional. Such interventions may be used only to the extent necessary to prevent physical harm to the patient or others. 11 Del. C. § 468(3); 16 Del. C. § 5161(b)(6).

The right to care and treatment suited to the patient's needs, skillfully, safely and humanely administered with full respect for the patient's dignity and personal integrity that is provided in a setting and under conditions that restrict the patient's personal liberty only to the extent required by the patient's treatment needs, applicable law and judicial orders. 16 Del. C. § 5161(b)(1).

The right to a written treatment plan based on professional evaluation that is periodically reviewed and revised. 16 Del. C. § 5161(b)(2).

The right to refuse treatment absent an emergency written order by a physician or a court order. 16 Del. C. § 5161(b)(5).

The right to up-to-date and accurate clinical records that must include periodic examinations, individualized treatment programs, evaluations, complete information on all matters relating to the admission, legal status, care and treatment of the patient, and all pertinent documents relating to the patient including copies of signed informed consent forms. 16 Del. C. § 5161(b)(4).

The right to receive, prior to discharge, a written continuing care plan developed in consultation with interdisciplinary staff, anticipated post-discharge provider and the patient. The plan must assess post-discharge social, financial, vocational, housing and treatment needs. The plan must identify services and provider information with a timetable of discrete, pre-discharge activities necessary to promote the patient's successful transition to the community-based services system or to another appropriate post-discharge setting. 16 Del. C. § 5161(b)(4).

E. Section 5162 of the Bill of Rights grants enforcement authority to all interested citizens including the Attorney General. In conformity with the Bill of Rights, this Agreement represents a voluntary effort by DPC to meet the concerns raised by the DDOJ investigation.

F. Nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability of the DPC under the Bill of Rights, the United States or Delaware constitutions or federal or state law, and this Agreement may not be used as evidence of liability in this or any other civil or criminal proceeding. Nor shall DPC's agreement to undertake actions and measures as specifically stated below constitute an admission or evidence that DPC does not currently undertake such actions and measures or that DPC's performance of such actions is not performed in accordance with generally accepted professional standards of care. Likewise, the use of the term "continue" herein does not constitute any admission by DDOJ or evidence that DPC is currently performing such practice or procedure in a manner that is effective or that complies with the *Mental Health Patients' Bill of Rights*.

G. The signatures below of officials representing the DDOJ and DPC signify that these parties have given their final approval to this Agreement.

H. This Agreement is enforceable only by the parties or the Delaware Court of Chancery. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. No person or entity is intended to be third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement in any civil, criminal, or administrative action. Similarly, this Agreement does not authorize, nor shall it be construed to authorize, access to DPC documents by persons or entities not a party to this Agreement.

I. This Agreement shall constitute the entire integrated Agreement of the parties. No prior contemporaneous communications, oral or written, or prior drafts shall be

relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding. Any amendment to this agreement shall be in writing, signed by both parties, as provided under Section XIV.M.

J. The parties agree that it is in their mutual interests to avoid litigation. The parties further agree that resolution of this matter pursuant to this Agreement is in the best interests of DPC residents.

K. All parties shall bear their own costs, including attorneys' fees, in this and any subsequent proceeding.

L. This Agreement shall take effect on May 1, 2008.

II. DEFINITIONS

A. "Consistent With Generally Accepted Professional Standards of Care" is a decision by a qualified professional that is not such substantial departure from contemporary, accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such accepted professional judgment.

B. "Department" as employed in the *Mental Health Patients' Bill of Rights*, "means the Department of Health and Social Services." 16 Del. C. § 5161(a)(1).

C. "Effective Date" of this agreement shall be May 1, 2008.

III. INTRODUCTION

A. Care and treatment provided by DPC shall be based on the Bill of Rights, professional standards of care and standards of care adopted by the Centers for Medicare and Medicaid Services ("CMS") and the Joint Commission and shall be designed to:

1. Ensure an environment free from emotional and physical abuse and neglect;

2. Ameliorate symptoms such that a less restrictive locus of treatment may safely be employed;

3. Strengthen and support patients' rehabilitation and recovery; and

4. Enable individuals to grow and develop in ways benefiting their health and well-being.

B. This shall be accomplished while maximizing patients' safety, security, and freedom from undue bodily restraint. Relationships between DPC staff and patients whom they serve shall be therapeutic and respectful.

C. Each patient served by DPC shall be encouraged to participate in identifying his or her treatment goals and in selecting appropriate treatment options. Care and treatment shall be designed to address each patient's psychiatric treatment needs and to assist individuals in meeting their specific treatment goals, consistent with the Bill of Rights and generally accepted professional standards of care. DPC shall ensure clinical and administrative oversight of, education of, and support to, its staff in planning and providing care and treatment consistent with these standards.

IV. INTEGRATED TREATMENT PLANNING

By 6 months from the Effective Date of this Agreement, DPC shall provide (or shall continue to provide, as the case may be) integrated, individualized protections, services, supports, and treatments (collectively "treatment") for the individuals it serves, consistent with the Bill of Rights and generally accepted professional standards of care. In addition to implementing the discipline-specific treatment planning provisions set forth below, DPC shall establish and implement standards, policies, and protocols and/or practices to provide that treatment determinations are consistently coordinated by an interdisciplinary team through integrated treatment planning and embodied in a single, integrated plan.

A. Interdisciplinary Teams

By 6 months from the Effective Date of this Agreement, each interdisciplinary team's membership shall be dictated by the particular needs, strengths, and preferences of the individual in the team's care, and, at a minimum, the interdisciplinary team for each individual shall:

1. Have as its primary objective the provision of individualized, integrated treatment that optimizes the patient's opportunity for recovery and ability to sustain himself/herself in the most appropriate, least restrictive setting, and supports the patient's interests of self-determination and independence;

2. Have its composition dictated by the individual's particular needs, strengths, and preferences, but shall consist of a stable core of members, including the individual, the treating psychiatrist, a nurse, and a social worker and, as the core team determines is clinically appropriate, other team members, who may include the individual's family, guardian, advocates, and the pharmacist and other clinical staff;

3. Complete training on the development and implementation of interdisciplinary treatment plans to the point that integrated treatment plans meet the requirements of section IV.B., *infra*; and

4. Meet every 30 days, and more frequently as clinically indicated.

B. Individualized Comprehensive Treatment Plans

By 6 months from the Effective Date of this Agreement, DPC shall develop and implement policies and/or protocols regarding the development of treatment plans consistent with the Bill of Rights and generally accepted professional standards of care, in accordance with the following provisions:

1. All patients admitted to DPC shall have an Individualized Comprehensive Treatment Plan ("ICTP").

2. The focus of the ICTP shall be to enhance a patient's level of functioning in order to prepare him/her for recovery and discharge into a less restrictive setting. The ICTP shall be developed to bring together the expertise, ideas, and recommendations of all treatment team members and the ideas, hopes and goals of the patient for the purpose of arriving at consensus regarding the patient's future recovery.

3. Treatment team members shall be expected to initiate a person-centered recovery-oriented therapeutic process with each patient upon admission. Treatment team members shall be expected to approach each person with hope, compassion, and caring, while addressing the specific symptoms and behaviors that led to the admission as well as those that need to be addressed in order to facilitate recovery. Repeated and goal-directed interactions between the patient and staff shall be applied to foster a hopeful therapeutic relationship and to encourage the patient's motivation and progress towards recovery.

4. Treatment planning shall begin at the time of a patient's admission to the DPC and continue through discharge. The patient and his/her treatment team shall collaborate in developing an individualized plan aimed at maximizing his or her recovery. The patient's needs shall be identified and prioritized during the assessment process and incorporated into the goals and objectives of the plan. The ICTP shall address the key factors that led to the patient's hospitalization as well as any additional risk factors particular to the patient. The ICTP shall provide a guide to treatment within the hospital as well as the development of recommendations for continued care upon discharge.

5. The ICTP shall be a working document that is reevaluated during the course of treatment to reflect the patient's changing needs and progress towards identified goals and objectives toward recovery.

C. Individualized Treatment Planning Process. The individualized treatment planning process shall include:

1. The development of an individualized ICTP,

2. Documentation of the patient's progress towards the defined goals and objectives,

3. Initial and ongoing assessments performed by treatment team members,

4. The development of recovery, discharge, and aftercare plans.

D. Timing of Treatment Plans and Updates

1. Initial Treatment Plan

    a. The admitting team – consisting at a minimum of the patient, a psychiatrist and a registered nurse – shall be responsible for the development of an initial treatment plan.

    b. The initial treatment plan must be completed within 24 hours of admission, or at the latest during the business day following admission. It should reflect those problems/issues/needs/risk factors that precipitated the person's admission to the hospital and should be based on the initial assessments completed by the admitting treatment team members. Recommendations for treatment should also incorporate the screening center assessment and input from family/significant others, if available. At a minimum, the initial treatment plan should include any recommendations related to the patient's acute psychiatric condition (*e.g.*, suicidal/homicidal ideation) as well as any acute medical or nutritional needs. The admitting psychiatrist and nurse shall be required to complete his/her respective section of the initial interdisciplinary recovery assessment at the time of the admission. A complete physical examination section of the initial interdisciplinary recovery assessment shall be performed by the physician not later than next day shift after admission.

2. Individualized Comprehensive Treatment Plan. The ICTP shall be completed within 10 days of admission and shall:

    a. Include recommendations from the interdisciplinary assessment.

    b. Establish priorities for the patient's recovery.

    c. Reflect the team's consensus regarding treatment needs and interventions.

    d. Define interventions and the responsible staff for each intervention.

    e. Identify any barriers to discharge or recovery and include a tentative discharge plan.

    f. Establish target dates for attaining objectives including a projected length of stay and the date to review the effectiveness of interventions.

g. Include readiness and motivation, history of abuse, and cultural/religious factors, as applicable, that impact on treatment.

h. Document any barriers to learning that may impact on patient or family education.

3. Treatment Plan Reviews. Treatment plan reviews shall be completed within the following time frames:

a. By the 40th day after admission (30 days after the date of the "10-day" ICTP);

b. At least every 60 days thereafter during the first year of the admission;

c. Within 5 days of the anniversary date (+/- 5 days) of the admission and each year thereafter; and

d. At least every 90 (+/- 5 days) days after the first year of the admission.

The treatment plan review should evaluate the patient's progress during the previous year.

4. Additional Principles of Treatment Planning. Treatment team notes and progress notes shall:

a. Reasonably provide the opportunity to describe the individual's progress and response to interventions. They shall serve as a format for reviewing and update the individual's status throughout the course of the hospitalization. All team members shall participate in this process and to review, compare and document the patient's status throughout the treatment planning process, and in particular at the time of the regularly scheduled reviews. The treatment team note must include the patient's and family's (where applicable) participation in the development of the plan, his/her response to the goals, the effect of treatment interventions, and changes in diagnosis or objectives. The treatment team notes will also document any rationale for deferring problems or needs.

b. Ensure that families and significant individuals involved in the patient's life are included in the treatment planning process to the extent practicable and with the patient's consent. Family education is also essential in recovery and discharge planning and these needs must also be documented and addressed in the ICTP.

c. Consultations with in-hospital and external consultants shall be encouraged for patients with complex or difficult treatment or diagnostic issues. The proper hospital forms must be used and the appropriate team member(s) must sign the request (*e.g.*, a medical doctor for a medical procedure or consultation).

E. Special Reviews of Treatment Plans

1. Special Treatment Team Review. The treatment team may meet, as needed, to review or address significant events and/or clinical issues that have an impact on the patient's recovery. A special treatment team note should reflect the team's decision and shall be documented.

2. Discipline Heads Treatment Review. Whenever a patient presents a particular challenge to the treatment team as a result of repeated incidents, symptoms, or behaviors unresponsive to treatment, the treatment team shall be authorized to request the clinical discipline heads to attend a special discipline head treatment team review. This review will include all the treatment team members as well as the discipline heads (or delegate) of psychiatry, social service, nursing, rehabilitation, and psychology, and if clinically appropriate, medicine, pastoral care and nutrition. The Chief of Psychiatry or designee shall also be authorized to initiate such a discipline head review whenever clinical circumstances warrant such a review or upon the written or verbal request of a discipline head or the Hospital Director.

V. MENTAL HEALTH ASSESSMENTS

By 6 months from the Effective Date of this Agreement, DPC shall ensure (or continue to ensure, as the case may be) that, consistent with the Bill of Rights and generally accepted professional standards of care, each individual shall receive, promptly after admission to DPC, an assessment of the conditions responsible for the individual's admission, and provide that it is accurate and complete to the degree possible given the obtainable information at the time of admission. Moreover, to the degree possible given the obtainable information, the individual's interdisciplinary team shall be responsible for investigating the past and present medical, nursing, psychiatric, and psychosocial factors bearing on the patient's condition, and, when necessary, for revising assessments and treatment plans in accordance with new information that comes to light. Thereafter, each individual shall receive a reassessment whenever there has been a significant change in the individual's status, a lack of expected improvement resulting from treatment clinically indicated, or 6 months since the previous reassessment.

A. Psychiatric Assessments and Diagnoses

1. By 6 months from the Effective Date of this Agreement, DPC shall use the diagnostic protocols in the most current Diagnostics and Statistics Manual ("DSM") for reaching the most accurate psychiatric diagnoses.

2. By 6 months from the Effective Date of this Agreement, DPC shall ensure that all psychiatric assessments are consistent with DPC's standard diagnostic protocols.

3. By 6 months from the Effective Date of this Agreement, DPC shall ensure that, within 24 hours of an individual's admission to DPC, the individual receives an initial psychiatric assessment, consistent with DPC's protocols.

4. By 6 months from the Effective Date of this Agreement, DPC shall ensure that: clinically justifiable, current assessments and diagnoses are provided for each individual; the documented justification of the diagnoses are in accord with the criteria contained in the most current DSM; differential diagnoses, "rule-out" diagnoses, and diagnoses listed as "NOS" ("Not Otherwise Specified") are timely addressed, through clinically appropriate assessments, and resolved in a clinically justifiable manner; and each individual's psychiatric assessments, diagnoses, and medications are clinically justified consistent with generally accepted professional standards of care.

5. By 6 months from the Effective Date of this Agreement, DPC shall develop protocols consistent with the Bill of Rights and generally accepted professional standards of care to ensure an ongoing and timely reassessment of the psychiatric causes of the individual's continued hospitalization.

B. Rehabilitation Assessments

1. The treating psychiatrist shall determine and document his or her decision, prior to the initial treatment team meeting, whether a comprehensive rehabilitation assessment is required for patient. When requested by the treating psychiatrist, or otherwise requested by the treatment team or member of the treatment team, DPC shall perform a comprehensive rehabilitation assessment, consistent with the Bill of Rights and generally accepted professional standards of care, and the requirements of this Agreement. Any decision not to require a rehabilitation assessment shall be documented in the patient's record and contain brief description of the reason(s) for the decision.

2. By 6 months from the Effective Date of this Agreement, all rehabilitation assessments will be consistent with the Bill of Rights and generally accepted professional standards of care and shall:

    a. Be accurate and coherent as to the individual's functional abilities;

    b. Identify the individual's life skills prior to, and over the course of, the mental illness or disorder;

    c. Identify the individual's observed and, separately, expressed interests, activities, and functional strengths and weaknesses; and

    d. Provide specific strategies to engage the individual in appropriate activities that he or she views as personally meaningful and productive.

3. By 6 months from the Effective Date of this Agreement, rehabilitation assessments of all individuals currently residing at DPC who were admitted there before the Effective Date of this Agreement shall be reviewed by qualified clinicians.

VI. DISCHARGE PLANNING AND COMMUNITY INTEGRATION

Taking into account the limitations of court-imposed confinement and consistent with the Bill of Rights and generally accepted professional standards of care, DPC shall pursue actively the appropriate discharge of individuals to the most integrated, appropriate setting that is consistent with each person's needs and to which they can be reasonably accommodated, taking into account the resources available to DPC and the needs of others with mental disabilities.

A. By 6 months from the Effective Date of this Agreement, DPC shall identify at admission and address in treatment planning the particular considerations for each individual bearing on discharge, including:

   1. Those factors that likely would foster successful discharge, including the individual's strengths, preferences, and personal goals;

   2. The individual's symptoms of mental illness or psychiatric distress;

   3. Barriers preventing the specific individual from being discharged to a more integrated environment, especially difficulties raised in previously unsuccessful placements, to the extent that they are known; and

   4. The skills necessary to live in a setting in which the individual may be placed.

B. By 6 months from the Effective Date of this Agreement, DPC shall provide the opportunity, beginning at the time of admission and continuously throughout the individual's stay, for the individual to be an active participant in the discharge planning process, as appropriate.

C. By 6 months from the Effective Date of this Agreement, DPC shall ensure that, consistent with the Bill of Rights and generally accepted professional standards of care, each individual has discharge plan that is a fundamental component of the individual's treatment plan and that includes:

   1. Measurable interventions regarding his or her particular discharge considerations;

   2. The persons responsible for accomplishing the interventions; and

   3. The time frames for completion of the interventions.

D. By 6 months from the Effective Date of this Agreement, when clinically indicated, DPC shall transition individuals into the community consistent with the Bill of Rights and

generally accepted professional standards of care. In particular, DPC shall ensure that individuals receive adequate assistance in transitioning prior to discharge.

E. Discharge planning shall not be concluded without the referral of a resident to an appropriate set of supports and services, the conveyance of information necessary for discharge, the acceptance of the resident for the services, and the discharge of the resident.

F. By 6 months from the Effective Date of this Agreement, DPC shall develop and implement a quality assurance/improvement system to monitor the discharge process.

VII. SPECIFIC TREATMENT SERVICES

A. Psychiatric Care

By 6 months from the Effective Date of this Agreement, DPC shall provide (or continue to provide, as the case may be) all of the individuals it serves with adequate and appropriate routine and emergency psychiatric and mental health services consistent with the Bill of Rights and generally accepted professional standards of care.

Without limiting the foregoing:

1. By 6 months from the Effective Date of this Agreement, DPC shall develop and implement policies and/or protocols regarding the provision of psychiatric care consistent with the Bill of Rights and generally accepted professional standards of care. In particular, policies and/or protocols shall address physician practices regarding:

    a. Documentation of psychiatric assessments and ongoing reassessments as per Section V.A., *supra*;

    b. Documentation of significant developments in the individual's clinical status and of appropriate psychiatric follow up;

    c. Timely and justifiable updates of diagnosis and treatment, as clinically appropriate;

    d. Assessment of, and attention to, high-risk behaviors (*e.g.*, assaults, self-harm, suicide attempts, falls) including appropriate and timely monitoring of individuals and interventions to reduce risks;

    e. Documentation of, and responses to, side effects of prescribed medications; and

    f. Timely review of the use of "*pro re nata*" or "as-needed" ("PRN") medications and adjustment of regular treatment, as indicated, based on such use.

2. By 6 months from the Effective Date of this Agreement, DPC shall develop and implement policies and/or protocols to ensure system-wide monitoring of the safety, effectiveness, and appropriateness of all psychotropic medication use, consistent with the Bill of Rights and generally accepted professional standards of care. In particular, policies and/or protocols shall address:

    a. Monitoring of the use of psychotropic medications to ensure that they are:

        i. Clinically justified;

        ii. Prescribed in therapeutic amounts, as dictated by the needs of the individual patient;

        iii. Tailored to each individual's clinical needs;

        iv. Monitored for effectiveness against the objectives of the individual's treatment plan;

        v. Monitored appropriately for side effects; and

        vi. Properly documented;

    b. Monitoring of the use of PRN medications to ensure that these medications are clinically justified and administered on a time-limited basis;

    c. Timely identification, reporting, data analyses, and follow up remedial action regarding adverse drug reactions reporting ("ADR");

    d. Drug utilization evaluation ("DUE") in accord with established, up-to-date medication guidelines;

    e. Documentation, reporting, data analyses, and follow up remedial action regarding actual and potential medication variances ("MVR");

    f. Tracking of individual and group practitioner trends;

    g. Feedback to the practitioner and educational/corrective actions in response to identified trends, when indicated; and

    h. Use of information derived from ADRs, DUE, MVR, and providing such information to the Pharmacy & Therapeutics, Therapeutics Review, and Mortality and Morbidity Committees.

3. By 6 months from the Effective Date of this Agreement, DPC shall ensure that all physicians and clinicians are performing in a manner consistent with the Bill of Rights and generally accepted professional standards of care, to include appropriate medication management, treatment team functioning, and the integration of behavioral and pharmacological treatments.

4. By 6 months from the Effective Date of this Agreement, DPC shall review and ensure the appropriateness of the medication treatment, consistent with the Bill of Rights and generally accepted professional standards of care.

5. By 6 months from the Effective Date of this Agreement, DPC shall ensure that individuals are screened and evaluated for substance abuse. For those individuals identified with a substance abuse disorder, DPC shall provide them with appropriate inpatient services consistent with their need for treatment.

B. Psychological Care

By 6 months from the Effective Date of this Agreement, DPC shall provide adequate and appropriate psychological supports and services, consistent with the Bill of Rights and generally accepted professional standards of care, to individuals who require such services.

1. By 6 months from the Effective Date of this Agreement, DPC shall ensure, consistent with the Bill of Rights and generally accepted professional standards of care, adequate capacity to meet the needs of patients in the following areas of psychological services:

   a. Behavioral treatment;

   b. Group therapy;

   c. Psychological testing; and

   d. Individual therapy.

2. By 6 months from the Effective Date of this Agreement, DPC shall provide adequate clinical oversight to therapy groups to ensure that individuals are assigned to groups that are appropriate to their individual needs, that groups are provided consistently and with appropriate frequency, and that issues particularly relevant for this population, including the use of psychotropic medications and substance abuse, are appropriately addressed consistent with the Bill of Rights and generally accepted professional standards of care.

3. By 6 months from the Effective Date of this Agreement, DPC shall provide adequate active psychosocial rehabilitation, consistent with the Bill of Rights and generally accepted professional standards of care, that:

    a. Is based on individualized assessment of patients' needs and is directed toward increasing patient ability to engage in more independent life functions;

    b. Addresses those needs in a manner building on the individual's strengths, preferences, and interests;

    c. Focuses on the individual's vulnerabilities to mental illness, substance abuse, and readmission due to relapse, where appropriate;

    d. Is provided in a manner consistent with each individual's cognitive strengths and limitations;

    e. Is provided in a manner that is clinically appropriate as determined by the treatment team;

    f. Routinely takes place as scheduled, for those interventions that are scheduled;

    g. Includes, in the evenings and weekends, additional activities that enhance the individual's quality of life;

    h. Prescribes a role for the staff on the living units; and

    i. Is documented in the individual's treatment plan.

4. By 6 months from the Effective Date of this Agreement, DPC shall ensure that:

    a. Behavioral interventions are based on positive reinforcements rather than the use of aversive contingencies, to the extent possible;

    b. Programs are consistent for each patient within all settings at DPC;

    c. Triggers for considering instituting individualized behavior treatment support plans are specified and utilized, and that these triggers include excessive use of seclusion, restraint, and emergency involuntary medication;

    d. Psychotherapy, whenever prescribed, is goal-directed, individualized, and informed by a knowledge of the individual's psychiatric, medical, and psychosocial history and previous response to psychotherapy;

e. Psychosocial, rehabilitative, and behavioral interventions are monitored and revised as appropriate in light of significant developments, and the individual's progress, or the lack thereof;

f. Clinically relevant information remains readily accessible; and

g. All staff who has a role in implementing individual behavioral programs has received competency-based training on implementing the specific behavioral programs for which they are responsible, and quality assurance measures are in place for monitoring behavioral treatment interventions.

VIII. DOCUMENTATION

By 12 months from the Effective Date of this Agreement, DPC shall ensure (or continue to ensure, as the case may be) that an individual's records accurately reflect the individual's progress as to all treatment identified in the individual's treatment plan, consistent with the Bill of Rights and generally accepted professional standards of care. By 12 months from the Effective Date of this Agreement, DPC shall develop and implement policies and/or protocols setting forth clear standards regarding the content and timeliness of progress notes, transfer notes, and discharge notes, including, but not limited to, an expectation that such records include meaningful, accurate assessments of the individual's progress relating to treatment plans and treatment goals.

IX. RESTRAINTS, SECLUSION, AND EMERGENCY INVOLUNTARY PSYCHOTROPIC MEDICATIONS

By 6 months from the Effective Date of this Agreement, DPC shall ensure that restraints, seclusion, and emergency involuntary psychotropic medications are used consistent with the Bill of Rights and generally accepted professional standards of care.

A. By 6 months from the Effective Date of this Agreement, DPC shall revise, as appropriate, and implement policies and/or protocols regarding the use of seclusion, restraints, and emergency involuntary psychotropic medications consistent with the Bill of Rights and generally accepted professional standards of care. In particular, the policies and/or protocols shall expressly prohibit the use of mechanical restraints in a prone position and shall list the types of restraints that are acceptable for use.

B. By 6 months from the Effective Date of this Agreement, and absent exigent circumstances (*i.e.*, when a patient poses an imminent risk of injury to himself/herself or others), DPC shall ensure that restraints and seclusion:

1. Are used in a reliably documented manner and after a hierarchy of less restrictive measures has been considered in a clinically justifiable manner or exhausted;

2. Are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;

3. Are not used as part of a behavioral intervention; and

4. Are terminated as soon as the individual is no longer an imminent danger to himself/herself or others, unless otherwise clinically indicated.

C. By 6 months from the Effective Date of this Agreement, DPC shall comply with 42 C.F.R. § 483.360(f), requiring assessments by a physician or licensed medical professional of any individual placed in seclusion or restraints within one hour. DPC shall also ensure that any individual placed in seclusion or restraints is continuously monitored by a staff person who has successfully completed competency-based training on the administration and monitoring of seclusion and restraints.

D. By 6 months from the Effective Date of this Agreement, DPC shall ensure the accuracy of data regarding the use of restraints, seclusion, or emergency involuntary psychotropic medications.

E. By 6 months from the Effective Date of this Agreement, DPC shall revise, as appropriate, and implement policies and/or protocols to require the review within three business days of individuals' treatment plans for any individuals placed in seclusion or restraints more than three times in any four-week period, and modification of treatment plans, as appropriate.

F. By 6 months from the Effective Date of this Agreement, DPC shall develop and implement policies and/or protocols consistent with the Bill of Rights and generally accepted professional standards of care governing the use of emergency involuntary psychotropic medication for psychiatric purposes, requiring that:

1. Such medications are used on a time-limited, short-term basis and not as a substitute for adequate treatment of the underlying cause of the individual's distress;

2. A physician assess the patient within one hour of the administration of the emergency involuntary psychotropic medication; and

3. In a clinically justifiable manner, the individual's core treatment team conducts a review (within three business days) whenever three administrations of emergency involuntary psychotropic medication occur within a four-week period, determines whether to modify the individual's treatment plan, and implements the revised plan, as appropriate.

G. By 6 months from the Effective Date of this Agreement, DPC shall ensure that all staff whose responsibilities include the implementation or assessment of seclusion, restraints, or emergency involuntary psychotropic medications successfully complete competency-

based training regarding implementation of all such policies and the use of less restrictive interventions.

X. PROTECTION FROM HARM

A. By 6 months from the Effective Date of this Agreement, DPC shall provide (or continue to provide, as the case may be) the individuals it serves with a safe and humane environment, ensure that these individuals are protected from harm, and otherwise adhere to a commitment to not tolerate abuse, neglect or mistreatment of individuals, and require that staff investigate and report abuse, neglect or mistreatment of individuals in accordance with this Agreement and with all Delaware state statutes governing abuse, neglect and mistreatment, including but not limited to, 16 Del. C. § 1131(1)(a) (physical abuse); 16 Del. C. § 1131(1)(b) (emotional abuse); 16 Del. C. § 1131(9)(a) (neglect); and 16 Del. C. § 1131(8) (mistreatment).

B. All DPC personnel who are mandatory reporters of abuse, neglect or mistreatment shall sign a statement that shall be kept with their personnel records evidencing their recognition of their reporting obligations. DPC shall not tolerate any mandatory reporter's failure to report abuse, neglect or mistreatment.

C. Subject to 16 Del. C. § 1141 and applicable regulations, DPC shall investigate the criminal history and other relevant background factors of any person proposed to be employed in direct patient care, whether full-time or part-time, temporary or permanent, or a person who volunteers on a regular basis. Subject to 16 Del. C. § 1142, applicable regulations and collective bargaining agreements, DPC shall also conduct drug testing of any person engaged in direct patient care.

D. Facility staff shall directly supervise volunteers for whom an investigation has not been completed when they are working directly with individuals living at the facility. The facility shall ensure that nothing from that investigation indicates that the staff person or volunteer would pose a risk of harm to individuals at DPC.

E. By 6 months from the Effective Date of this Agreement, DPC shall review and update any and all policies concerning fall precautions and ensure that such policies are consistent with generally accepted professional standards of care and the Bill of Rights.

F. Within 30 days from the Effective Date of this Agreement, the DPC shall submit a protocol and set of procedures governing the use of its currently deployed system of video-monitoring throughout DPC patient areas as a management and prevention tool for the purpose of ensuring patient safety and quality of care.

XI. INCIDENT MANAGEMENT

By 12 months from the Effective Date of this Agreement, DPC shall develop and implement, across all settings, an integrated incident management system that is consistent with the Bill of Rights and generally accepted professional standards of care.

A. By 12 months from the Effective Date of this Agreement, DPC shall review, revise, as appropriate, and implement incident management policies, procedures and practices that are consistent with the Bill of Rights and generally accepted professional standards of care. Such policies and/or protocols, procedures, and practices shall require:

1. Identification of the categories and definitions of incidents to be reported and investigated; immediate reporting by staff to supervisory personnel, DPC's director (or that official's designee), and State officials of serious incidents; and the prompt reporting by staff of all other unusual incidents, using standardized reporting across all settings;

2. Mechanisms to ensure that, when serious credible allegations of abuse, neglect, and/or serious injury occur, staff take immediate and appropriate action to protect the individuals involved, including removing alleged perpetrators from direct contact with individuals pending the investigation's outcome;

3. Adequate training for all staff on recognizing and reporting incidents;

4. Notification of all staff when commencing employment and adequate training thereafter of their obligation to report incidents to DPC;

5. Posting in each patient care unit a brief and easily understood statement of how to report incidents;

6. Procedures for referring incidents, as appropriate, to law enforcement; and

7. Mechanisms to ensure that any staff person, individual, family member, or visitor who, in good faith, lawfully reports an allegation of abuse or neglect to DPC or a government agency with authority to investigate alleged abuse/neglect and enforce standards of patient care is not subject to retaliatory action by DPC and/or the State, including but not limited to reprimands, discipline, harassment, threats, or censure, except for appropriate counseling, reprimands, or discipline because of an employee's failure to report an incident in an appropriate or timely manner.

B. By 12 months from the Effective Date of this Agreement, DPC shall review, revise, as appropriate, and implement policies and/or protocols to ensure the timely and thorough reporting of incidents to the Division of Long Term Care Residents Protection per statute.

C. By 12 months from the Effective Date of this Agreement, whenever remedial or programmatic action is necessary to correct reported incident or prevent re-occurrence, DPC shall implement such action promptly and thoroughly and track and document such actions and the corresponding outcomes.

D. By 12 months from the Effective Date of this Agreement, records of the results of every investigation of abuse, neglect, and serious injury shall be maintained in a manner that permits investigators and other appropriate personnel to easily access every investigation involving a particular staff member or individual.

E. By 12 months from the Effective Date of this Agreement, DPC shall have a system to allow the tracking and trending of incidents and results of actions taken.

XII. QUALITY IMPROVEMENT

By 6 months from the Effective Date of this Agreement, DPC shall develop, revise, as appropriate, and implement quality improvement mechanisms that provide for effective monitoring, reporting, and corrective action, where indicated, to include substantial compliance with this Agreement. The quality improvement methodologies shall be otherwise consistent with the Bill of Rights and generally accepted professional quality improvement standards.

XIII. COMPLIANCE AND ENFORCEMENT

A. Within ninety (90) days after the Effective Date of this Agreement, DPC shall prepare and submit to the Compliance Committee and the DDOJ a comprehensive action plan ("action plan") identifying the specific measures DPC intends to take and/or currently is taking in order to ensure compliance with this Agreement including a timeline for completion of each of the measures.

B. DPC represents that it will continually and periodically refine and revise the policies and/or protocols outlined in this Agreement to ensure compliance with the letter and intent of this Agreement.

C. DPC represents that it has educated, or will educate, all employees at DPC with respect to the policies and/or protocols outlined in this Agreement.

D. DPC shall provide the DDOJ with copies and an opportunity to provide substantive comment upon any policies and/or protocols revised pursuant to this Agreement. The DDOJ shall provide any such comments to DPC no later than 30 days following receipt of the draft policies or protocols.

E. DPC shall maintain records to document its compliance with all terms and conditions of this Agreement. DPC shall also maintain any and all records required by, or developed pursuant to, this Agreement.

F. Until this Agreement is terminated, the DDOJ shall have unrestricted access to, and shall, upon request, receive copies of any documents (including databases), records, and information relating to the implementation of this Agreement and that are relevant to evaluate compliance with the Agreement, except any documents protected by attorney-client privilege or applicable self-evaluation privileges (*e.g.*, 24 Del. C. § 1768). DPC shall provide any requested documents, records, and information to the DDOJ as soon as possible, but no later than within 20 business days of the request. The DDOJ's right to access shall include, but is not limited to, buildings and facilities, staff and residents, including private interviews with staff with the consent of DPC, and, where clinically appropriate, interviews with residents; and resident records, documentation, and information relating to the issues addressed in this Agreement except where covered by attorney work product protections or the attorney-client privilege. DPC shall make all employees available so that they may choose to cooperate fully with the DDOJ. The DDOJ agrees to provide DPC with reasonable notice in advance of any visit or inspection, and any proposed interviews of DPC staff or patients, although the parties agree that no notice shall be required in an emergency situation where the life, immediate health, or immediate safety of resident(s) is at issue. Nothing in this Agreement shall abridge the whistleblower rights of State employees or contractors under law.

G. The parties agree to the appointment of the Honorable Judge Vincent J. Bifferato as the jointly-selected Compliance Committee Chairperson ("Compliance Chair") to monitor DPC's implementation of and compliance with this Agreement. The Compliance Chair shall have full authority to independently assess, review, and report semi-annually on DPC's implementation of and compliance with the provisions of this Agreement. The Compliance Committee may jointly or separately provide DPC with technical assistance upon request. The Compliance Committee shall be authorized to bring any issues relating to compliance with this agreement to the attention of the parties at any time.

H. The DDOJ and DPC, subject to approval of the Compliance Chair, may appoint to the Compliance Committee up to six additional persons or entities as are reasonably necessary to perform the compliance tasks specified by this Agreement.

I. DPC shall bear all reasonable fees and costs of the Compliance Committee. In selecting the Committee, the DDOJ and DPC recognize the importance of ensuring that the fees and costs borne by DPC are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Committee. In the event that any dispute arises regarding the payment of the Committee's fees and costs, DPC, the DDOJ and the Compliance Chair shall attempt to resolve the dispute cooperatively.

J. The overall duties of the Committee led by the Compliance Chair shall be to observe, review, report findings, and make recommendations to the parties with regard to the implementation of the Agreement. The Committee shall regularly review the services provided to the residents at DPC to determine DPC's implementation of, and compliance with, this Agreement. The Committee shall give DPC reasonable notice in advance of all visits.

K. The Committee shall have only the duties, responsibilities and authority conferred by this Agreement. The Committee shall not, and is not intended to, replace or take over the role and duties of the Secretary of the Department or the Director of DPC. Information received by the Committee shall be confidential and privileged with the exception that any member of the Committee may testify in any action brought to enforce this Agreement and regarding any matter relating to the implementation or enforcement of this Agreement. No member of the Committee shall testify in any other litigation or proceeding with regard to any act or omission by the State or DPC, or any of their agents, representatives, or employees related to the Agreement or regarding any matter or subject that the Committee may have received knowledge of as a result of its performance under the Agreement. Unless such conflict is waived by the parties, no member of the Committee shall accept employment or provide consulting services that would present a conflict of interest with the Committee's responsibilities under the Agreement, including being retained (on either a paid or unpaid basis) by any current or former litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. The Committee is not a State or local agency, or an agent thereof, and accordingly the records maintained by the Committee shall not be deemed public records. The Committee shall not be liable for any claim, lawsuit, or demand arising out of the Committee's performance pursuant to the Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for ensuring compliance with the Agreement.

L. DPC shall provide the Committee with full and unrestricted access to the facility, relevant State and facility staff and employees, and any documents (including databases) necessary to carry out the duties assigned to DPC by the Agreement. The Committee's right of access includes, but is not limited to, all documents regarding medical care, mental health care and treatment, incident reporting, and employee discipline or policies, procedures, protocols or analyses involving one of those subject areas. The Committee shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or the DDOJ, absent written notice to the DDOJ and DPC and either written consent by the parties or a court order authorizing disclosure.

M. In order to report on DPC's implementation of each substantive provision of the Agreement, the Committee shall conduct periodic reviews of DPC's compliance with the provisions of the Agreement, but no less than quarterly at DPC. The Committee may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of the Agreement. The Compliance Chair has unilateral authority regarding the Committee's recommendations and its review of DPC's compliance with the Agreement.

N. The Committee through the Compliance Chair shall issue semi-annual public reports detailing DPC's compliance with and implementation of the Compliance MOA. The first report shall issue November 15, 2008 and semiannually thereafter for a period of 24 months, unless it is expressly agreed by the parties to terminate such Committee at an

earlier or later date. The Committee may issue reports more frequently if the Committee determines it appropriate to do so. At least ten business days prior to issuing a report, the Committee shall provide a draft to the parties for review and comment to determine if any factual errors have been made. The Committee shall consider the parties, responses and then promptly issue the report. The Committee shall be responsible for immediately notifying both parties of any breach of the Agreement of which it becomes aware. DPC will take timely action to remedy any deficiencies cited in the report.

O. If the DDOJ maintains that DPC has failed to carry out any requirement of this Agreement, the DDOJ shall notify DPC of any instance(s) in which it maintains that the DPC has failed to carry out the requirements of this Agreement.

P. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of DPC patient(s), the DPC shall take substantial steps within 90 days of notice of non-compliance from the Compliance Committee Chair. The DPC shall correct the claim of non-compliance within a reasonable time. If the DDOJ and DPC fail to reach an agreement, the DDOJ is not limited in any fashion in pursuing its law enforcement obligations without further notice; including any litigation against DPC and/or seeking appropriate judicial enforcement of any provision of this Agreement.

Q. DPC shall notify the DDOJ immediately upon the death of any resident and shall forward to the DDOJ copies of any completed incident reports related to death, autopsies and/or death summaries of residents, as well as all final reports of investigations that involve residents' deaths.

R. If, at any time, any party to this Agreement desires to modify it for any reason, that party will notify the other party in writing of the proposed modification and the reasons therefore. No modification will occur unless there is written agreement by the DDOJ and the DPC.

S. This Agreement will terminate no earlier than 24 months subsequent to the Effective Date of this Agreement and when the Compliance Chair determines that DPC is in substantial compliance with the terms and conditions of this Agreement. Notwithstanding the foregoing, this Agreement may terminate prior to 24 months after the Effective Date, or at any time if (1) the DPC and/or the Department shall jointly enter into an agreement with the United States of America pursuant to the federal *Civil Rights of Institutionalized Persons Act* ("CRIPA"), 42 U.S.C. § 1997a, *et seq*.; and (2) the Compliance Chair and the DDOJ specifically determines that the standards and practices provided for in this Agreement will continue to be enforced pursuant to any CRIPA agreement. As promptly as practicable after the Effective Date of this Agreement, the DDOJ will commence legal representation of the DPC and the parties shall use their best efforts to coordinate and resolve the CRIPA investigation such that DPC will not be subject to duplicative or contradictory standards. By agreeing that the DDOJ shall re-assume such representation, however, the Department and/or DPC expressly waives any right to move to disqualify the DDOJ from enforcing this Agreement or the Bill of Rights in any proceeding, judicial or otherwise.

Dated this __8th_ day of May, 2008.

For the DDOJ:

/s/ Richard S. Gebelein
Richard S. Gebelein
Chief Deputy Attorney General

/s/ Jennifer D. Oliva
Jennifer D. Oliva
Deputy State Solicitor

/s/ Barbara J. Gadbois
Barbara J. Gadbois
Deputy Attorney General

For the DPC:

/s/ Vincent P. Meconi
Vincent P. Meconi
Secretary, Department of Health and Human Services

/s/ Renata Henry, Acting Director
Renata Henry
Director, Division of Substance Abuse and Mental Health

/s/ Husam E. Abdallah
Husam E. Abdallah
Director, Delaware Psychiatric Center

/s/ Joseph C. Schoell
Joseph C. Schoell, Esquire
WolfBlock LLP